

## Merit Systems Protection Board

## §1201.134

judge, as defined at §1201.4(a) of this part, for hearing.

(b) The judge will issue an initial decision on the complaint pursuant to 5 U.S.C. 557. The applicable provisions of §§1201.111, 1201.112, and 1201.113 of this part govern the issuance of initial decisions, the jurisdiction of the judge, and the finality of initial decisions. The initial decision will be subject to the procedures for a petition for review by the Board under subpart C of this part.

[62 FR 48451, Sept. 16, 1997, as amended at 62 FR 66815, Dec. 22, 1997]

### §1201.132 Final decisions.

(a) In any Special Counsel complaint seeking corrective action based on an allegation that a prohibited personnel practice has been committed, the judge, or the Board on petition for review, may order appropriate corrective action. 5 U.S.C. 1214(b)(4)(A).

(b) (1) Subject to the provisions of paragraph (b)(2) of this section, in any case involving an alleged prohibited personnel practice described in 5 U.S.C. 2302(b)(8), the judge, or the Board on petition for review, will order appropriate corrective action if the Special Counsel demonstrates that a disclosure described under 5 U.S.C. 2302(b)(8) was a contributing factor in the personnel action that was taken or will be taken against the individual.

(2) Corrective action under paragraph (b)(1) of this section may not be ordered if the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure. 5 U.S.C. 1214(b)(4)(B).

### §1201.133 Judicial review.

An employee, former employee, or applicant for employment who is adversely affected by a final Board decision on a corrective action complaint brought by the Special Counsel may obtain judicial review of the decision in the United States Court of Appeals for the Federal Circuit. 5 U.S.C. 1214(c).

## SPECIAL COUNSEL REQUESTS FOR STAYS

### §1201.134 Deciding official; filing stay request; serving documents on parties.

(a) *Request to stay personnel action.* Under 5 U.S.C. 1214(b)(1), the Special Counsel may seek to stay a personnel action if the Special Counsel determines that there are reasonable grounds to believe that the action was taken or will be taken as a result of a prohibited personnel practice.

(b) *Deciding official.* Any member of the Board may delegate to an administrative law judge the authority to decide a Special Counsel request for an initial stay. The Board may delegate to a member of the Board the authority to rule on any matter related to a stay that has been granted to the Special Counsel, including a motion for extension or termination of the stay.

(c) *Place of filing.* A Special Counsel stay request must be filed with the Clerk of the Board.

(d) *Initial filing and service.* The Special Counsel must file two copies of the request, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing the respondent agency or the agency's representative. The certificate of service must show the last known address, telephone number, and facsimile number of the agency or its representative. The Special Counsel must serve a copy of the request on the agency or its representative, as shown on the certificate of service.

(e) *Subsequent filings and service.* Each party must serve on every other party or the party's representative one copy of each of its pleadings, as defined by §1201.4(b). A certificate of service describing how and when service was made must accompany each pleading. Each party is responsible for notifying the Board and the other parties in writing of any change in name, address, telephone number, or facsimile number of the party or the party's representative.